

August 2, 1985

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

SAN PASQUAL VALLEY - PROPOSED ABATEMENT OF TWO HOUSES

In connection with the City Council's consideration of action to abate two houses in the San Pasqual Valley, which action was before the City Council at its meeting on July 22, 1985, Councilman Mitchell raised the question of why, rather than abating the two houses the City does not merely enforce its lease of the property which includes the two houses, which lease requires the lessee, i.e., TMY Farms, to maintain the leasehold and the improvements thereon "in a decent, safe, healthy, and sanitary condition."

The same issue was raised by Councilman Mitchell when the matter was before the Public Facilities and Recreation Committee. At that time this office prepared and submitted the attached

Memorandum of Law on the subject. You will note from the Memorandum of Law that the City does have certain rights to require the lessee to maintain the leasehold improvements. After some discussion, however, the Public Facilities and Recreation Committee determined to recommend that we proceed to abate the houses rather than enter into a process which could involve lengthy litigation.

Our office is willing to proceed in whatever direction the City Council directs. However, it should be noted that in any action to require the lessee to properly maintain the houses, issues may be raised with regard to the condition of the various houses at the time the lease was entered into in 1978, and, with regard to the potable water issue, if it is determined that it is not economically feasible to provide potable water to one or more houses because of factors outside the control of the lessee, it may be difficult to convince a court to force the lessee to provide such water.

A related issue brought up at the Council meeting on July 22, 1985, was the matter of why the City has not taken action to require the shutting off of water from the well presently serving the two houses in question. As background, the well which earlier served the two houses was found to contain a high nitrate

level. Mr. Konyn did not respond to the City's demands that he discontinue the water service from that well to the houses and the City thereafter directed the Gas & Electric Company to discontinue the service to the well. Thereafter, Mr. Konyn made improvements to another well in the area and hooked that well up to the two houses. The second well was also subsequently found to contain water with a nitrate level above acceptable standards for drinking. The electric line to the second well also serves residences. The City thereupon demanded that Mr. Konyn refrain from providing water from the second well to the two houses which Mr. Konyn has declined to do.

In the meantime, the City has been proceeding with action necessary to abate the two houses which would, of course, cure the problem with regard to the second well. If the City Council wishes this office to proceed with litigation requiring the discontinuance of water from the second well, we could proceed through the temporary restraining order process. However, if we are allowed to proceed with the abatement of the houses, the temporary restraining order process would probably not be necessary.

Respectfully submitted,

JOHN W. WITT

City Attorney

HOV:cc:731.17(x043.1)

Attachment

RC-85-18